IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 780, 781, 782 & 783 of 2003.

Date of Decision: 21-5-2007.

1. CWP No.780 of 2003.

Diwan Singh and another. — Petitioners.

Versus

State of H.P. and another. — Respondents.

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2. CWP No.781 of 2003.

Diwan Singh and another — Petitioners.

Versus

State of H.P. and another. — Respondents.

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3. CWP No.782 of 2003.

Vinod Kumar — Petitioner.

Versus

State of H.P. and others. — Respondents.

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4. CWP No.783 of 2003.

Ravinder — Petitioner.

Versus

State of H.P. and others. — Respondents.

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Coram

Hon'ble Mr. Justice Deepak Gupta, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]?

For the petitioner : S/Shri Deepak Kaushal and Dalip Sharma Advocates.

For the respondents : Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Dy. A.G.

Per Surinder Singh, J.

Since the common question of law and facts are involved in these petitions, therefore, taken up together to avoid the repetition and conflicting judgments.

Whether reporters of the Local papers are allowed to see the judgment?

Shorn of the un-necessary details, the relevant facts are as under:

(i) The petitioners in CWP No. 780 of 2003 are the co-owners of land comprised in Khasra Number 274, khata-khatauni No. 1-06-59 situated in mauza Basal, Patti Jarash, District Solan, H.P. as per jamabandi for the year 1999-2000 (Annexure-P2);

(ii) In CWP No. 781 of 2003, the petitioners are owners of khasra numbers 1324, 1325, khata-khatauni number 138/121, measuring 34-98-13 Bighas, situated in mauza Basal, Patti Khas, District Solan, H.P. (Annexure-P2);

(iii) In C.W.P. No. 782 of 2003, the petitioners are the co-owners of khasra number 277, Khata Khatauni number 286/701 min, measuring 0-16-34 Bighas, situated in mauza Basal, Patti Jarash, District Solan, H.P. (Annexure-P2);

(iv) In CWP No. 783 of 2003, the petitioners are the co-owners of khasra number 131, khata khatauni number 297/733 min, measuring 1-95-27 bighas situated in mauza Basal, Patti Jarash, District Solan, H.P. (Annexure-P2).

The respondents intended to acquire the aforesaid land, for the purpose of establishment of the ropeway from “Chambaghat” to “Karol” by the Department of Tourism. Therefore, a notification under Section 4 of the Land Acquisition Act (hereinafter to be referred to as the ‘Act’) was issued on 10-12-1997 and the same was published in the H.P. Government Rajpatra on 10-1-1998 and two news papers on 30-12-1997.

The notification under Section 6 of the Act was also issued on 16.10.1998 (Annexure-P4) and notice under Section 9 of the Act was

issued on 14-12-1999. The objection petitions were filed by the objectors (Annexure-P6) before the Land Acquisition Collector vide letter dated 16-3-2000 (Annexure-P7). The Land Acquisition Collector sought the approval of award regarding the land comprised in Khasra Numbers 1325/1, 1325/2, 66/1, 66/2, 66/3, 131/1, 277/1 and 274/1 measuring 250 sq mtrs each. The formal award after the approval was passed on 27.9.2001 (Annexure-P1) wherein khasra number 277/1 and 274/1 have been wrongly described as 177/1 to 174/1 which fact is admitted by the respondents, during the arguments.

CASE OF THE PETITIONERS.

In brief, it is alleged that the award was passed in violation of the provisions of Section 11-A of the Act whereby the acquisition proceedings if not completed within 2 years, would lapse. The petitioners are in possession and they are not divested of their possession and therefore, the proceedings and the award are liable to be quashed.

The perusal of the record of these cases show that on 4-1-2005 this Court had passed the following order:

> "19-4-2005: Present: S/Shri Deepak Kaushal and Dalip Sharma, Advocates for the petitioners.
>
> Mr. M.S. Chandel, Advocate General with Mr. D.C. Pathik, Addl. Advocate General, for Respondents 1 to 3.
>
> Before proceeding further in this case and other connected writ petitions raising identical question, we think it necessary that with a view to do the complete justice between the parties, parties need to be directed to produce record of any order referred to in the objections of the petitioners and other similar situate persons as detailed in annexure P-6, dated 10.1.2000 filed along with writ petition. Parties are further

directed to produce the record of the suit as well as stay order referred to in this annexure. In addition to this, learned Advocate General is also directed to produce the original file wherein annexure P-6 dated 10.1.2000 was filed along with purported stay order as detailed in it.

List on 29th April, 2005.

A duly authenticated copy of this order by the Court Secretary will be made available to the learned counsel for the parties during the course of the day today.

Sd/-

(Arun Kumar Goel)
Judge.

Sd/-

(Surjit Singh)
Judge."

Again on 12-9-2005, the following order was passed:

"12.9.2005: Present: Mr. Deepak Kaushal, Advocate with Mr. Dalip Sharma, Advocate for the Petitioners.

Mr. M.S. Chandel, Advocate General with Mr. Vijay Thakur, Dy. A.G. for the respondents.

CWP No. 780 of 2003.

The learned Advocate General has produced the record of Land Acquisition Collector before us today. On perusal of the said record, we find that Gita Ram and four others had filed case No. 71/1 of 1999 in the Court of learned Senior Sub Judge, Solan, District Solan. The learned Trial Court has passed interim stay order on 13-1-1999 directing the defendants therein to maintain status quo qua the suit property as existing on the

spot on that day till 19.5.1999. Thereafter the interim stay order stands vacated by the trial Court on 21.5.2001. In the facts and circumstances of the case, the Registry shall summon the record of Case No. 71/1 of 1999 titled Gita Ram and others –v- State and others supposed to be pending or decided by the trial Court. The record shall be summoned within two weeks and on receipt thereof, list this writ petition along with CWPs No. 781, 782 and 783 of 2003. Record of the Land Acquisition Collector is returned over to the learned Advocate General.

Sd/-
Lokeshwar Singh Panta, ACJ.

Sd/-
Surjit Singh, J".

The matter came up for hearing before us on 16-5-2007. The record was ordered to be made available, which was produced at the time of hearing.

SUBMISSIONS BEFORE US.

We have heard the learned counsel for the parties and examined the record.

Precisely, Shri Deepak Kaushal and Dalip Sharma, Advocates, learned counsel for the petitioners forcefully argued that the impugned award deserves to be quashed for non-compliance of the provisions of Section 11-A of the Act as the award was not passed within 2 years from the date of publication of the notification under Section 6 of the Act.

On the other hand, Shri M.S. Chandel, learned Advocate General has submitted that the delay was attributable to the petitioners who had represented through their counsel before the Land Acquisition Collector that civil court had stayed the proceedings and on the vacation of the said order, further proceedings started and all the formalities were completed

and the award was passed. Therefore, the petitions deserve to be dismissed with costs as the petitioners have suppressed the material facts from the Court.

FINDINGS.

We have given our thoughtful consideration to the submissions made by the learned counsel for the parties made before us to do complete justice.

Section 11-A of the Act, which was inserted by 1984 amendment Act, obliges the Collector to make an award under Section 11 of the Act within a period of two years from the date of publication of declaration under Section 6 and in case the award is not made within that period, the entire acquisition would lapse. The legal position is beyond any doubt. The explanation added to Section 11-A is an exception to it which says that in computing the period of two years referred in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

The question is how the period is to be computed. For that we refer to Section 6 sub-section (1) of the Act which requires a declaration to be made for acquisition of the land for the public purpose. The manner of publication is prescribed in Section 6 (2) of the Act as under:

> "(1) By publication in the official gazette;
>
> (2) By publication in two daily news papers circulating in the locality in which the land is situated;
>
> (3) causing public notice of the substance of declaration Under Section 6.

Accordingly, the sub-section aforesaid lays down the date which is to be taken as the date of publication. The period of two years have to be counted from the last of such dates (Please see: *Ram Jiyawan –v- State of U.P. and others AIR 1994 All 38 DB)).*

In the instant case, the annexure attached with the petitioners are either incomplete or are irrelevant. For instance in CWP No. 780 of 2003, wherein Khasra number 274/1 is involved, the notification (Annexure P/4) issued under Section 6 of the Act on 16.10.1998 does not find mention and its endorsement (on page 14 of the file) is shown to have been made on 10.12.1997 which fact is prima facie incorrect and there is nothing to show about the date of its publication. Therefore, we reconciled the facts from the files of the Land Acquisition Officer.

The notification under Section 4 in all the cases in hand was issued on 10.12.1987, which was published in the Rajpatra on 10.1.1998. Thereafter a notification under Section 6 of the Act was issued on 16th October, 1998 which was published on 30th November, 1998 in the official gazette. The award was passed on 27th September, 2001 i.e. after two years.

It is pertinent to note that the petitioners had filed the objections under Section 9 of the Act. They, inter alia took several objections and one of them was that the stay was issued by the civil court in **civil suit No. 71 of 1999 Gita Ram and others** –v- **State of H.P. and others** which prevented the Collector to proceed further.

We have perused the file of the case. It was a suit for declaration, with respect to the land comprised in various khasra numbers of village Basal Patti Kather, District Solan, to the effect that the plaintiffs and proforma defendants are owners in possession of the land mentioned therein and mutation number 1721 dated 25.8.1975 in the name of State of H.P. was wrong and not binding upon them and proforma defendants and revenue entries are incorrect. But there was no mention of any of the khasra numbers which are subject matter of acquisition.

It is also important to note that an application under Section 39 Rules 1 and 2 of the Code of Civil Procedure was also moved by the

Plaintiffs Gita Ram and others. On 31.3.1999, the learned Senior Sub Judge Solan had passed order of status quo stay as follows :

> "31-3-99:Present: Shri R.K. Garg, Advocate, counsel for the applicant.
>
> Shri S.S. Kaushal, ADA for the Respondent.
>
> Reply to the application not filed and the main suit is listed for written statement for 19.5.1999. In the light of the urgency of the matter shown, as it would take time for the State to file reply, hence till final adjudication of the application under consideration, the respondents are directed to maintain status quo qua the suit property as existing today on the spot, till 19.5.99. List on dated 19.5.1999.
>
> Sd/-
> Senior Sub Judge, Solan"

Vide order dated 19-5-1999, the interim order of status quo was extended till 16.9.1999. In the meantime, the respondent State filed an application for the vacation of interim stay aforesaid. Both the applications were fixed for consideration on 21.5.2001 and the learned trial Court passed the following orders:

> "21-5-2001: Present: Shri R.K. Garg Advocate for the Applicant.
>
> Sh. N.L. Sen Govt. Pleader for Respondents No.1 to 3.
>
> Sh. Shashi Pandit Advocate for the respondents 4 & 5.
>
> The reply to the application u/o 39 rule 1 & 2 CPC as well as reply to the application seeking vacation of the stay order filed by the respondents No.4 and 5. On perusal of order dated 31.3.99, the respondents were directed to maintain status quo qua suit property as existing on the spot on that date till 19.5.99 and thereafter this order was extended on each date of hearing till 19.9.2000. On perusal of order dated 19.9.2000 this order was never extended

thereafter. The respondents have sought vacation of interim order dated 31.3.99 and since no such order is in operation after 19.9.2000 therefore, the application is dismissed being infructuous and it is made clear to the parties that there is no interim injunction in the present proceedings. So now come up for rejoinder and consideration on 28.5.2001.

Sd/-
Senior Sub Judge.

Thereafter the suit was repeatedly adjourned for rejoinder and consideration and the application under order 39 rule 1 & 2 CPC was finally dismissed as not pressed, on the statement of Shri R.K. Garg counsel for the applicants recorded on 24.9.2002. The main suit was also dismissed as withdrawn on 20.5.2003 as per the statement of the counsel recorded on that day.

The status quo order, quoted above, before the Land Acquisition Collector, was produced by the petitioners through their same counsel Shri R.K. Garg who was representing their case in the Civil Court. Though the stay was vacated on 21-5-2001 but still on 26-5-2001, the petitioners, in their objections vide para 2, filed before the Collector Land Acquisition, alleged that the stay is still in force and in case any action regarding the land is taken, the contempt proceedings may be initiated against the contemnor.

The upshot of the entire discussion is that the above facts goes to show that the Collector could not proceed further in the matter because of mis-representation of facts and the petitioners had been time and again representing before him that the said stay order was extended from time to time knowing fully well that the present khasra numbers were not the subject matter of the suit, and even otherwise the status quo stay was vacated on 21-5-2001. In other words, the present land was never involved in the suit aforesaid. Because of the above misrepresentation,

the matter could not be disposed of by the collector. Therefore, in our considered opinion, the period aforesaid deserves to be excluded and the petitioners are required to be saddled with exemplary costs. Once it is so concluded, the passing of the award is held to be within time and the petitions deserve to be dismissed with costs.

For the reasons aforesaid and also nothing that the petitioners did not approach this Court with clean hands and had suppressed the material facts, they are not entitled for any relief. Therefore, the petitions are dismissed with costs quantified at Rs. 5000/- in each of the petitions.

(Deepak Gupta)
Judge.

(Surinder Singh),
Judge.

May 21, 2007.
(bm)